

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
APRIL 26, 2016

Conference Room, Gambling Control Board  
Department of Public Safety  
45 Commerce Drive, Augusta, ME

Commission Members Present: William Varney, Chair, Gary Reed, William McFarland and Michael Graham

Commission Members Absent: Commissioner Willette

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Ralph Canney, Dennis May, Jaime Wood and Miles Greenleaf.

**1. Call the Meeting to Order and Introductions:** William Varney, Chair

**2. Review and Approval of Written Decisions and Orders**

AAG, Guay explained to the Commission what would happen regarding the written decision and order for Cobalt. He stated that only 2 of the Commissioners are eligible to vote because 2 of them are new and they were not here to decide the original decision and order. The chair would call for a vote and Commissioners Varney and Graham would recuse themselves from the vote. Commissioners McFarland and Reed would vote. Commissioner Varney called for a vote on the consolidated cobalt decision and order. Commissioner McFarland made a motion to approve the decision and order as presented here in this 37 page document today with respect to Randy Bickmore, W. Drew Campbell, Steven Vafiades and Patricia Switzer. Commissioner Reed seconded. Vote 2-0. AAG, Guay had Commissioners McFarland and Reed signed the decision and order.

**3. Consideration of Pending Motions Relating to the Consolidated Cobalt Case**

Commissioner Varney turned the meeting over to counsel. AAG, Guay stated that what we have pending before the Commission is a petition for reconsideration. We are not going to hear the petition for reconsideration because one of the counsels could not be here. In the petition for reconsideration there was a motion for further findings. That has been done once in this case regarding the amount of time to pay the fines. In this case one of the licensees who is both a driver and trainer, there was a question of whether or not the suspension applied to both the driver and trainer. This is what you would be hearing about today. Mark Randlett and William Childs were present. AAG, Guay stated that we would reopen the consolidated cobalt hearing for the limited purpose of further finding on the suspension of W. Drew Campbell. AAG, Guay qualified the Commissioners. Commissioner Varney stated that Mr. Campbell drove horses for him but that would not impair his decision. There was no objection from counsel. Commissioner Varney continued with the hearing. Mr. Randlett stated that the Department does not have the burden of proof. It is a matter of law and how the Commission applies their rules. He pointed the Commission to Chapter 17, Section 1 General Provisions which states, "Whenever the penalty of suspension is prescribed in these rules, it shall be construed to mean an expulsion from the time of receipt of written notice of suspension from any participation either directly or indirectly, in the privileges and uses of the course and grounds of an Association during the progress of a race meeting, unless otherwise specifically limited when such suspension is imposed, such as

a suspension from driving.” Mr. Randlett interprets that language to mean that once the Commission has determined there are grounds for suspension and imposes the suspension it applies to all privileges that attach themselves to harness racing. That would be in Mr. Campbell’s case training and driving unless the Commission during its deliberation and finding had specifically determine that driving is being excluded from that suspension. It’s their position that it would be if the Commission in this case were to grant this motion and exclude from the suspension any prohibition on driving especially render the sanction imposed against Mr. Campbell meaningless because he would still be able to participate in the racing of his horses that he owns and driving; and that any sanction for his conduct would not have any real effect in this case. The Department’s position is that the suspension shall apply for both training and driving. Mr. Childs stated that the Department’s present argument they would have them for the first time decide that anytime a driver is suspended on the racetrack for a driving violation that that means that all licenses need to be suspended. Each case is looked at differently. Mr. Childs called Mr. Campbell to testify. AAG, Guay gave Mr. Campbell his oath. Mr. Campbell replied with yes. Mr. Campbell testified that his major income comes from driving. AAG, Guay asked if the Commission members had any questions. Commissioner Graham asked Mr. Childs, can you tell me when I read this in Section 1 of Chapter 17 either directly or indirectly, in the privileges and uses of the course and grounds of an Association during the progress of a race meeting. How can we allow him to drive if he can’t be there on the grounds? Mr. Childs stated that if there’s a suspension of his driver’s license only; does that mean he can’t be at the track training. He has never seen that interpretation. Commissioner Graham stated that they can’t be at the track. How can he drive if he can’t be at the track? Mr. Childs stated that any time a driver is suspended for a driver’s violation that means he can’t be at the track. We have never done that before for drivers. Commissioner Varney asked if there was any precedence for going the other way. Have we had this question before? AAG, Randlett stated yes there is. This question came up before the Commission in 2005 and there was an advisory ruling issued by the Maine State Harness Racing Commission. The question related to whether suspensions in regard to any license prohibit from engaging in any kind of activities at a racetrack which would include sitting in the grandstand during race meets, exercising horses, calling the association to declare horses eligible to race and making driver changes. The Commission, at that time, determined that a suspension included exclusion from all activities at the track unless otherwise specifically provided for otherwise by the Commission. It is up to the Commission if they want to allow the driving. Attorney Childs asked to call Mr. Canney for a witness. AAG, Guay gave Mr. Canney his oath. Attorney Childs asked Mr. Canney if he had experienced where individuals were issued a driver’s license were under suspension for a trainer’s violation. Mr. Canney stated yes, just once, Gary Mosher. Commissioner Varney asked if there was a hearing where they did that. Mr. Canney stated that there was a hearing back in the ‘90’s that they suspended Mr. Mosher’s licenses of an elevated blood gas; and he made a very persuasive speech to the Commission and they in turn responded with the fact that he could drive while his owner/trainer’s license was suspended. Mr. Canney stated that the judges at the racetrack can suspend a driver for 3, 4 or 8 days and the driver has the opportunity to accept that or appeal to the Commission. During that time he is suspended, he is allowed to participate in most any other activity except driving; and he is allowed to go into the paddock. There is a difference in that type of suspension than what you are dealing with today. Attorney Childs stated that the Mosher situation is very similar to the Campbell situation. He asked that the Commission utilize the same logic that was applied in Mosher to Campbell. AAG, Guay stated that he would like both counsel to approach to get the

advisory ruling. Attorney Childs stated that he filed a motion on March 8, 2016 asking that under Chapter 17, Section 1 we address whether Campbell can be licensed as a driver or not. If there was going to be something like this filed, it should have been filed before today. AAG, Guay disagreed. There was a brief recess while Attorney Childs read the Advisory Ruling. He asked Attorney Childs if he had any argument specifically relating to this opinion. Attorney Childs asked for a brief continuance to consult with Mr. Canney on the ruling. AAG, Guay asked Attorney Childs for his opinion. Attorney Childs stated that he doesn't believe this is particularly persuasive in this preceding. The Commission under Chapter 17, Section 1 has the discretion to suspend some or all of their licenses. They are asking that Mr. Campbell be issued a driving license. Attorney Randlett stated that the Commission has the authority to grant a relief from that general suspension based on the specific facts of the case. The Commission is being asked to provide relief from the overall broader suspension. It's up to Attorney Childs and his client to convince the Commission that allowing him to retain and operate under his driver's license would be appropriate. The Department has met their standard. The suspension must apply to his driver's license too. Attorney Childs asked AAG, Guay if he had to show the burden of proof. AAG, Guay stated that the State has to show the burden of proof. AAG, Guay closed the hearing. Commissioner Reed stated that when he voted to find that Mr. Campbell had committed his trainer responsibility violation he did not have in his mind that he was penalizing him by taking away his driver's license. Commissioner McFarland stated that he disagreed with Commissioner Reed. He stated that it has been the practice with this Commission that a suspension of the license is a full suspension. It doesn't make any sense with respect to the public perception. This Commission is entrusted with keeping the integrity of this sport and protecting the public. In order to do that, those that would wish to stretch rules and violate the rules in doing so take away from those that operate above board and fairly. It is not fair for those that are losing the money and the drives and the training income that otherwise they could have. Our rules are good rules and we need to enforce those rules to protect the integrity of this sport. Commissioner Varney stated that he is having a small problem with the fact that if it works one way why it doesn't work the other. If a driver's suspended why he could be allowed to do some of the things he can't do while his trainer's license is suspended. Commissioner Graham stated that he thinks that when your driver's license is suspended it says that his license is suspended for 3 days or 4 days. It's the same way the Commission could have said that your trainer's license is suspended only. That would be his interpretation. Commissioner McFarland stated that Mr. Canney brought up the point the suspension of driver's licenses with respect to judges and there is at least in his opinion there is a distinct difference between what the judges are entrusted to do watching a race go off, and finding a violation of those rules that are directly under their responsibility. That person if they are aggrieved they can bring it to this Commission. Commissioner Varney asked for a motion. Commissioner Graham made a motion that when the Commission suspends a license all licenses are suspended. Commissioner McFarland seconded. AAG, Guay stated that what they have is a motion for further findings on whether or not the suspension would apply to all licenses specifically to Mr. Campbell. What he is hearing that the Commission and seconding the motion is saying is that they would deny that motion to allow him to drive on the legal principal that a suspension under the rules is suspension of all licenses. Is that correct? Commissioners stated yes. AAG, Guay stated that technically you are denying the motion for further findings that he would be allowed to drive under his driver's license on the bases of the plain language of the rule. He asked questions to the Commissioners so that he could right the decision. He asked the Commissioners to look under Chapter 17, Section 1 where it says "suspension from any

participation either directly or indirectly, in the privileges and uses of the course and grounds of an Association during the progress of a race meeting, unless otherwise specifically limited when such suspension is imposed". What Mr. Campbell is saying is, look you suspended me it wasn't clear whether or not you wanted to limit that suspension. That is what we are here deciding. If you are saying that you are denying the motion, you are also saying that you do not see a reason to specifically limit his previous suspension on all licenses. Is that correct? Commissioner Graham stated yes. Commissioner McFarland stated yes. AAG, Guay stated that the motion on the floor is to deny the motion to limit the suspension and allow Mr. Campbell to drive based on the language of the general suspension of all use of course. AAG, Guay was done asking his clarifying questions. Commissioner Varney asked for a vote. The Commissioners deliberated further. Commissioner McFarland made a motion to only suspend 180 days of W. Drew Campbell's 270 day suspension for his driver's license (resulting in a 90 day suspension of his driver's license) and he is not allowed on the premises on days that he does not drive and his trainer's suspension stays enforce. Commissioner Graham seconded. Vote 3-1. Commissioner Reed opposed. AAG, Guay stated that the signed written Decision and Orders go into effect today. The licensees will go to court and try to get a stay for penalties. Attorney Childs made a request to the Commission to consider a stay of all trainer suspensions pending appeal. This will be for Steven Vafiades, Randy Bickmore, W. Drew Campbell and Patricia Switzer. AAG, Guay asked the State if they are opposed. Attorney Randlett stated yes. AAG, Guay stated that the State will respond to the motion for a stay. Attorney Randlett stated that the department would oppose any relief for a stay. In order to obtain a stay for relief, they have to prove three things. Number 1, they need to prove a reputable injury to Mr. Campbell or the other licensees as a result if the stay is not granted. Number 2, they need to show a strong likelihood of success of the merits of the appeal and number 3, they have to show that there will be no substantial harm to adverse parties or the general public. AAG, Guay stated that they are reopening the consolidated cobalt hearing for the purpose of hearing a motion for a stay. Attorney Childs made the motion and the State has spoken in opposition. The motion would be whether to grant a stay in the matter of the consolidated cobalt hearing based on the decision and order that was issued today. AAG, Guay stated that only the two previous Commissioners would vote on the motion. He asked the two Commissioners how they would vote on the motion to grant a stay on the consolidated cobalt hearing. Commissioner Reed stated no. Commissioner McFarland stated no. Vote 2-0. Motion fails.

#### 4. **Adjudicatory Hearings:**

- a. **RE: Patricia Switzer, Complaint Number 2015 MSHRC 034.** Ms. Switzer is alleged to have violated MSHRC Rules Chapter 7 and 11. Ms. Switzer was the trainer of record for the horse "The Ring King". A blood sample obtained from The Ring King following the Seventh Race at Scarborough Downs on May 17, 2015 disclosed the presence of Erythropoietin. Ms. Switzer was not present. AAG, Guay gave Mr. Greenleaf his oath. He asked Mr. Greenleaf questions regarding Ms. Switzer. Mr. Greenleaf stated that he talked with Ms. Switzer and she stated that she would not be present today. AAG, Guay asked Mr. Greenleaf to read the second to the last paragraph on the second page. Mr. Greenleaf read the paragraph into the record as "failure to appear at the scheduled hearing may result in a disposition by default and a decision issued against you. Any such default may be set aside for good cause shown." AAG, Guay asked if he had a discussion with Ms. Switzer and that she may have a decision rendered against her today. Mr. Greenleaf stated yes and that she was

ok with that. AAG, Guay stated that they would proceed with the hearing. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer's License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, MSHRC Sample Tag; Exhibit 6, Sample Shipment Sheet and Exhibit 7, LGC Certificate of Analysis. AAG, Guay admitted the exhibits without objection. AAG, Guay qualified the Commissioners. Mr. Jennings stated that the exhibits show evidence that a violation has occurred. EPO is a prohibited substance under Chapter 11. AAG, Guay closed the hearing for deliberations. Commissioner Graham made a motion that they find Ms. Switzer in violation of EPO. Commissioner McFarland seconded. Vote 4-0. AAG, Guay stated that he would like to have a more complete record. Mr. Jennings called Dr. Matzkin to describe what EPO falls into under Chapter 11. Dr. Matzkin stated that EPO is a protein that all mammals have that increases their production of red blood cells in the body. AAG, Guay asked Dr. Matzkin if EPO has any therapeutic use in the equine athlete. Dr. Matzkin stated yes theoretically. AAG, Guay asked Dr. Matzkin if EPO has a high potential to influence performance. Dr. Matzkin stated yes. In the ARCI it is classified as a Class II drug. Mr. Jennings stated that he and Dr. Matzkin spent quite a bit of time reading the descriptions of Chapter 11 where they classified drugs. He said it fits better in the Class II classification of the old Chapter 11. AAG, Guay closed the hearing for deliberations. Commissioner Varney asked if Mr. Jennings had a recommendation. Mr. Jennings stated under the old rule as a Class II that he recommends 6 months to one year suspension, \$750 fine and return of the purse. Commissioner Varney asked for a motion. Commissioner Graham made a motion to find Ms. Switzer a \$1,000 fine, one year suspension and the return of the purse to be paid within 90 days. Commissioner McFarland seconded. Vote 4-0.

- b. RE: Stephen Murchison, Complaint Number 2015 MSHRC 058.** Mr. Murchison is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Murchison is the trainer of record for the horse "Big Bad Baylee". A blood sample obtained from Big Bad Baylee following the Ninth Race at Scarborough Downs on May 2, 2015 disclosed the presence of Cobalt. This case has been continued to the next meeting.
- c. RE: Stephen Murchison, Complaint Number 2015 MSHRC 059.** Mr. Murchison is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Murchison is the trainer of record for the horse "Friendship". A blood sample obtained from Friendship following the Fifth Race at Scarborough Downs on May 3, 2015 disclosed the presence of Cobalt. This case has been continued to the next meeting.
- d. RE: Frank Hiscock, Complaint Number 2015 MSHRC 060.** Mr. Hiscock is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hiscock is the trainer of record for the horse "Boy Crazy". A blood sample obtained from Boy Crazy following the Ninth Race at Scarborough Downs on May 17, 2015 disclosed the presence of Cobalt. Mr. Hiscock was present. AAG, Guay gave Mr. Hiscock his oath. The Commissioners were qualified by AAG, Guay. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer's License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, MSHRC Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Laboratory Certificate of Analysis and Exhibit 8, University of Kentucky Final Report on Cobalt. AAG, Guay admitted the exhibits without objection from Mr. Hiscock. AAG, Guay asked Mr. Hiscock if he stipulated to being the trainer of record for the horse "Boy

Crazy” and the horse raced in the ninth race at Scarborough Downs on May 17, 2015. Mr. Hiscock stated yes. Mr. Hiscock did not stipulate to the horse having cobalt in its system on the date in question. Mr. Jennings stated that the evidence shows that a violation of Chapter 11 occurred. The Commission take note that the decision and order signed today in terms of precedence around cobalt and whether it is a prohibited substance or not. AAG, Guay stated that you can look at previous decisions. He read from the decision and order on page 32, second paragraph. AAG, Guay gave Mr. Greenleaf his oath. Mr. Greenleaf testified. AAG, Guay gave Dr. Matzkin his oath. Dr. Matzkin testified. Mr. Jennings stated that the Departments position is that we need to be consistent and fair. AAG, Guay closed the hearing. Commissioners deliberated. Commissioner McFarland made a motion that Mr. Hiscock is in violation of the rule based on the conclusion of law in the consolidated cobalt cases of 50 as being a prohibited substance. Commissioner Graham seconded. Vote 4-0. AAG, Guay asked what the rule would be for this case. Mr. Jennings stated that the previous rule applies to this case. The new rule went into effect on May 28, 2015. AAG, Guay asked for a recommendation from the Department. Mr. Jennings stated that the minimum penalty would be \$500 fine, 90 day suspension and return of the purse. AAG, Guay stated that Mr. Jennings is making reference to the decision and order page 33 that the Commission concluded that these prohibited substance violations fell into the designations of Class III penalty under commission rule Chapter 11. AAG, Guay closed the hearing on the penalty phase. Commissioner McFarland made a motion to find Mr. Hiscock a penalty consistent with previous penalties levied for a Class III cobalt drug of \$500 fine, 90 day suspension and return of all purses and fine to be paid within 90 days. Commissioner Reed seconded. Vote 4-0.

- e. **RE: Allison MacDonald, Complaint Number 2015 MSHRC 061.** Mr. MacDonald is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. MacDonald is the trainer of record for the horse “Magically”. A blood sample obtained from Magically following the Eleventh Race at Scarborough Downs on May 9, 2015 disclosed the presence of Cobalt. Mr. MacDonald was present. AAG, Guay gave Mr. MacDonald his oath. AAG, Guay qualified the Commissioners. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer’s License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, MSHRC Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Lab Certificate of Analysis and Exhibit 8, University of Kentucky final Lab Report. AAG, Guay admitted the exhibits without objection. Mr. MacDonald had no exhibits. AAG, Guay asked Mr. MacDonald if he stipulated to being the trainer of record on May 9, 2015 of the horse Magically and the horse raced at Scarborough Downs in the eleventh race on May 9, 2015. Mr. MacDonald stated yes to the stipulations. He also stated that he did give the horse cobalt but not intentionally. AAG, Guay asked if the horse did have a level of cobalt higher than 50 ppb. Mr. MacDonald stated yes at 58 ppb. AAG, Guay stated that if you admit to the violation than we would move to the penalty phase. Mr. MacDonald stated yes. AAG, Guay closed the hearing. Commissioner Varney asked for a motion. Commissioner Graham made a motion to find Mr. MacDonald a \$500 fine, 90 day suspension and the return of the purse. The fine to be paid within 90 days. Commissioner McFarland seconded. Vote 4-0.

## 5. Other Business:

AAG, Guay stated that the previous Commission granted authority to the executive director to enter into consent agreements that were NSAIDS. The Commission is given authority to Mr. Jennings to enter into consent agreements for those. In these cases, there really isn't a negotiation because the consent agreements are for a warning. The Commission today would confirm that they do delegate to Mr. Jennings for NSAIDS for the warnings to allow him to sign them so the Commission would not have to vote on them. Those cases would not come before you. He would have authority to sign them on behalf of the Commission. The licensee would sign them and under the law the AAG's office would sign them as well. This would be a good time to make a decision whether it is ok for Mr. Jennings to sign them. If today is ok, then from now on you would not have review of the consent agreements. You need to discuss this. Commissioner McFarland stated that he is in favor of the consent agreements; however, they would like an electronic copy of them. Mr. Jennings stated that the NSAIDS of Chapter 17 Category C page 10 written warnings for a first offense. Commissioner Varney asked for a motion. Commissioner McFarland made a motion to give the executive director authority to enter into an administrative consent agreement with individuals that fall under Category C the minimum requirements as show in Chapter 17 page 10 for a first offense within 365 days of the last violation and that they receive electronic copies of the signed consent agreement. Commissioner Graham seconded. Vote 4-0.

Mr. Jennings stated that this Memorandum is superseded by an advisory. The Commission asked to capture in writing what it means to be suspended. AAG, Guay stated that these are the judges and for them to comment on staff memo on how they are going to apply the rules. They decision like they did today on Mr. Campbell what the rule and the law is. If you want an advisory ruling, you have to do that. You need to give notice. He suggested to the Commissioners to not respond to this memo.

**6. Public Comment**

Commissioner Varney asked for public comment. Commissioner McFarland asked Mr. Jennings about reciprocity of a suspension of other states. Do other jurisdictions give the Commission a heads up or any email of people who are on suspension other than the USTA. Mr. Jennings stated no. AAG, Guay stated that Chapter 17, Section 21 page 13 all penalties imposed by any racing commission in any racing jurisdiction shall be recognized and enforced by this commission. Commissioner McFarland stated that it is a great rule. There are a lot of states and jurisdictions that keep track of individuals. He wants to make sure that we are meeting this requirement. Mr. Timmons, president of Cumberland Fair, stated that he would receive a call from the executive director about an individual that received a penalty, fine or suspension that would affect their ability to participate in the sport. He would have the authority to tell these individuals to leave the grounds of their association.

Ms. Perkins passed out an article regarding rules of reciprocity in other states. Commissioner McFarland stated that the court case pending of the Windsor Fair from September 6, 2010 is settled and over.

**7. Schedule of Future Meetings**

May 16, 2016

**8. Adjourn**

1:05 p.m.